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Miscellaneous

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No.

DAVID H. SCULL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA EX REL. COMMITTEE ON LAW REFORM AND RACIAL ACTIVITIES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, David H. Scull, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia in the case of *Scull* v. *Commonwealth of Virginia ex rel. Committee on Law Reform and Racial Activities.*

Opinions Below

The unreported opinions, judgments and orders of the Supreme Court of Appeals of Virginia and of the Circuit Court of Arlington County are attached hereto as Appendix A, *infra*, p. 19.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia denying petition for writ of error was entered on January 20, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Questions Presented

In 1956 the Virginia Legislature established the Thomson "Committee on Law Reform and Racial Activities" as part of its program of resistance to school integration. Petitioner was called before the Committee in the course of an investigation described by its Chairman as one to "bust" the NAACP "wide open". Petitioner refused to tell the Committee whether he was a member of the NAACP or other civic and political organizations and for his refusal he was convicted and sentenced. The questions presented are:

1. Was petitioner's freedom of speech and association unlawfully impaired by his conviction for refusing to tell a Committee of the Virginia Legislature investigating racial activities whether he was associated with the NAACP and other civic and political organizations?

2. Were due process and equal protection guarantees violated by petitioner's conviction for refusing to answer questions during the course of an investigation admittedly intended to keep the NAACP, its members, and others "out of litigation" to promote school integration?

3. Was petitioner denied due process by his compelled interrogation before a Virginia legislative committee which

had no rules, no reasonable grounds for calling and questioning him, and no identifiable subject under inquiry at the time of his appearance?

Statute Involved

The statute creating the Committee on Law Reform and Racial Activities is Chapter 37 of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session, 1956, which is set forth as Appendix B, *infra*, p. 23.

Statement

Petitioner has been sentenced to fine and imprisonment for his failure to answer a number of questions before a Committee of the Virginia Legislature investigating "litigation relating to racial activities."[1] Evaluation of petitioner's interrogation and of his refusal to answer requires an examination of the legislative history surrounding the establishment of the Committee and of the circumstances leading to his refusal.

1. *The Legislative History*

Shortly after this Court's 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483, the Legislature of the State of Virginia undertook a program of massive resistance to school integration.

On August 30, 1954, the Governor appointed a commission to examine the effect of the *Brown* decision. On November 11, 1955, the Commission submitted its final report to the Governor, recommending a special session of the General Assembly and a constitutional convention for the passage of legislation and a constitutional amendment to confer broad discretion upon the Virginia school authori-

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[1] The questions appear in full in Appendix C, *infra*, p. 26.

ties to assign pupils and use state funds for the prevention of integration.

On February 1, 1956, shortly after this report, the General Assembly adopted an "interposition resolution" by a vote of 36-to-2 in the Senate and 90-to-5 in the House of Delegates, stating in part as follows:

> "That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves; • • •
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> "That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;
>
> "That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States; • • •
>
> "[That Virginia] anxiously concerned at this massive expansion of central authority, • • • is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens. • • •
>
> "And be it finally resolved, that until the question here asserted by the State of Virginia be settled

by clear Constitutional amendment, we pledge our firm intention to take all appropiate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

On August 27, 1956, the General Assembly was convened by the Governor in an Extra Session to pass anti-integration legislation. The Governor stated in his opening address to the Session:

"The people of Virginia and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

"Because of the events I have just mentioned, I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools . . ."

"The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly . . ."

"Manifestly, integration of the races would make impossible the operation of an efficient system. By this proposed legislation, the General Assembly, properly exercising its authority under the [State] Constitution,

> will clearly define what constitute an efficient system for which State appropriations are made."

In response to this appeal the Assembly enacted a series of bills including a pupil assignment plan,[2] provision for the discontinuance of state funds to integrated schools, and a package of "anti-NAACP bills."

2. *Establishment of the Thomson Committee*

On the same day that it approved the school bills, the Virginia Legislature passed a package of "anti-NAACP bills," appearing as Chapters 31 to 37 of the Acts of the General Assembly, Extra Session 1956,[3] the last of which created the "Committee on Law Reform and Racial Activities", commonly known as the "Thomson Committee" for its sponsor and Chairman, Delegate Thomson. The Act creating the Committee empowered it

> "to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State."

To that end, the Committee was directed to collect evidence necessary to determine (1) the need "for legislation which would assist in the investigation of such organizations . . . relative to the State income tax laws", (2) the need for legislation "redefining the taxable status" of such organizations and of donations to such organizations, and (3) "the effect which integration or the threat of integration

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[2] The pupil placement law was held unconstitutional. *Atkins* v. *School Board*, 148 F. Supp. 430, *aff'd*, 246 F. 2d 325, *cert. den.* 355 U.S. 855.

[3] These Acts have been respectively codified in the Code of Virginia at §§ 18-349.9 et seq., 18-349.17 et seq., 54-74, 78, 79; 18-349.25 et seq., 18-349.31 et seq., and 30-35 et seq.

could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.'"[4]

3. *Petitioner's Interrogation*

Prior to and after the establishment of his Committee, Chairman Thomson made public statements that its investigations would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (Oct. 15 Tr. 47-49).[5] Shortly after its establishment in September of 1956, the Committee initiated investigations and hearings in various Virginia localities. In its hearings the Committee called "around one hundred" witnesses concerning the NAACP and one witness concerning the "Defenders of State Sovereignty" (Oct. 15 Tr. 31-33).

Petitioner was subpoenaed to appear before the Committee on September 20, 1957, because of unverified allegations appearing in a printed pamphlet entitled "The Shocking

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[4] The "laws of barratry, champerty and maintenance" referred to are included in the six other "anti-NAACP" acts passed with the Thomson Committee measure. These other acts establish in the area of racial activities and racial litigation, registration requirements (Chapters 31 and 32), criminal penalties (Chapters 33, 35, 36) and another investigating committee, the "Boatwright Committee" (Chapter 34). Three of these measures were recently held unconstitutional in a decision by a federal three-judge court in *NAACP* v. *Patty*, 26 Law Week 2370 (D.C.E.D. Va.), decided January 21, 1958.

[5] There are three significant transcripts in the record. The first is the transcript of petitioner's appearance before the Committee on September 20, 1957 and is designated as "Sept. 20 Tr.". The second is the transcript of the October 15, 1957, hearing before the Circuit Court of Arlington County on the show cause order and is designated "Oct. 15 Tr.". The third is the transcript of the October 30, 1957, hearing of the contempt trial and is designated as "Oct. 30 Tr.". In a few places where the context is clear, the letters "Tr." are used without dates.

Truth" emanating from the "Fairfax Citizens Council," an organization about which the committee had no information (Oct. 15 Tr. 20, 23-25, 43-45). The pamphlet (designated in the record as Respondent's Exh. No. 1, Oct. 15, 1957) implies some unspecified relationship between petitioner's Post Office box in Annandale, Virginia, and a number of organizations such as the NAACP, the B'nai B'rith, the American Friends Service Committee, and the Fairfax Federation of PTAs.

At the outset of the Committee hearing on September 20, 1957, petitioner demanded to be informed of the question under inquiry before the Committee, whereupon the Chairman simply rephrased the authorizing resolution in terms even more vague than those of the statute itself.[6] Thereupon petitioner was asked a series of questions relating to his membership in, and the use of his mailbox by, various civic and political organizations, including the Fairfax County Council on Human Relations, the NAACP, the ACLU, the ADA, and the American Friends Service Committee. See Appendix C, *infra*, p. 26. Petitioner refused to answer these questions, as well as questions concerning his involvement in "racial litigation," on the grounds, among others, that they infringed upon his rights under the Federal Constitution. Petitioner's statement refusing to answer these questions on federal constitutional grounds is included as Appendix D to this petition, *infra*, p. 28.

[6] "CHAIRMAN THOMSON: The subjects under inquiry by the Committee, Mr. Scull, are three-fold:

One—several which primarily do not deal with you, but I will nonetheless state all three—the tax-exempt or tax status of both racial organizations in Virginia and the contributions made to such organizations—that is, the taxable status of them.

The integration or threat of integration on the public school system of Virginia, or the general welfare of Virginia.

The third one deals with the violation of certain statutes which are designed to prevent champerty, barratry, and maintenance, or the unauthorized practice of the law" (Sept. 20 Tr. 4).

4. *Enforcement Proceedings*

Following petitioner's refusal to answer and pursuant to the procedure provided by the statute (Appendix B; *infra*, p. 23), petitioner was ordered to show cause before the Circuit Court of Arlington County why he should not be compelled by judicial order to answer the Committee's questions.

i. At the hearing on the show cause order on October 15, 1957, the only witness was Chairman Thomson, who related petitioner's refusals to answer Committee questions. On cross-examination, Mr. Thomson affirmed that he had publicly stated his investigation would be "devastating to the NAACP," would "bust that organization wide open" and "could be used to keep the NAACP out of litigation, which is the heart of the organization" (Tr. 47-49). When asked whether the Committee had investigated any groups other than the NAACP, he stated that it had investigated the "Defenders of State Sovereignty," but conceded that there had been only one witness from that organization as contrasted to "around one hundred" concerning the NAACP (Tr. 31-33).

ii. Chairman Thomson conceded that the Committee had no published rules whatever and the only unpublished rules he could recall concerned the definition of a quorum and a provision for reporting the Committee's proceedings (Tr. 15-16). He affirmed that petitioner had been called because of unverified allegations by the Fairfax Citizens Council (concerning which he had no information) appearing in the pamphlet "The Shocking Truth" (Tr. 20, 23-25, 43-45) and volunteered that, "Of course, I use anonymous telephone calls to begin an investigation with" (Tr. 25). When asked to clarify his statement to petitioner at the hearing concerning the subject under inquiry by the Committee (see *supra*, n. 6, p. 8), Mr. Thomson was reduced to utter

confusion. He was unable to state the subject under inquiry or the need for petitioner's testimony in any terms other than to repeat parts of the authorizing statute, and could make no understandable explanation as to which, if any, parts of the statute were involved in petitioner's questioning nor what he had meant in his statement at the hearing that certain parts of the statute were not involved (Tr. 38-45). He defended the questions addressed to petitioner concerning his civic and political associations on the ground that they would tend to reveal "whether in fact those organizations are racial in character" and would help verify the charges in the pamphlet, "The Shocking Truth" (Tr. 39, 43-45).

iii. Notwithstanding these admissions by Chairman Thomson, the Circuit Court ordered petitioner to appear before the Committee on October 23, 1957, to answer the questions he had previously refused to answer. The Court overruled petitioner's reliance on the *Watkins* and *Sweezy* cases and his contention that the Committee's proceedings violated his rights under the 14th Amendment.[7] See Appendix A, *infra*, pp. 20, 22.

iv. Thereafter petitioner appeared before the Committee on October 23rd and again refused to answer the questions put to him on September 20th.[8] On October 30th petitioner

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[7] Petitioner's constitutional contentions were succinctly stated in his "Motion to Quash Rule to Show Cause" set forth in Appendix D, *infra*, p. 30. See also Oct. 15 Tr. 51-68.

[8] The Circuit Judge, in his order of Oct. 15, 1957, refused a stay pending appeal. In the week between October 15th and October 23rd petitioner unsuccessfully sought a stay of the order of October 15 from the Supreme Court of Appeals of Virginia and from the Chief Justice of this Court, fearing that his failure to employ any available means of review might result in invocation by the courts of Virginia of the doctrine of the *Mine Workers* case, 330 U.S. 258. Having exhausted the only means available for appeal of the order of October 15 prior to October 23rd when he was required to answer, petitioner contended at his contempt trial on October 30 that the *Mine Workers* doctrine was inapplicable. This contention was accepted by the Circuit Judge (see Oct. 30 Tr. 47),

was tried for civil and criminal contempt. At his contempt trial petitioner expressly reasserted all of his earlier contentions under the 14th Amendment (Oct. 30 Tr. 25; see Appendix D, *infra*, p. 28); nevertheless he was found guilty of both civil and criminal contempt and sentenced to serve 10 days in the Arlington County jail and to pay a fine of $50.00 (see Appendix A, *infra*, p. 21). The sentence was stayed pending appeal.

On January 20, 1958, the Supreme Court of Appeals of Virginia refused petitions for writs of error sought by petitioner from the order of October 15, 1957, compelling him to answer the Committee's questions, and from the judgment and order of October 30, 1957, convicting and sentencing petitioner for civil and criminal contempt for disobedience of the order of October 15. See Appendix A, *infra*, p. 19. As concerns the October 15 order to answer, the Supreme Court of Appeals was "of opinion that the said order is plainly right"; the Court likewise found that the October 30th judgment of contempt "is plainly right" and affirmed both rulings. This petition seeks review of the judgment of the Supreme Court of Appeals affirming petitioner's conviction and sentence of October 30, 1957.

Reasons for Granting the Writ

The Decision of The Virginia Supreme Court of Appeals is in Direct Conflict with Recent Decisions of This Court Upholding Constitutional Rights of Witnesses Before Legislative Investigating Committees

The judgment below upholding petitioner's interrogation and conviction contravenes the principles clearly an-

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by counsel for the Committee in opposing petitioner's request for a writ of error, and by the Supreme Court of Appeals of Virginia which affirmed both the order to testify and the contempt conviction on the merits, making no reference to the *Mine Workers* doctrine.

nounced and explicitly applied by recent decisions of this Court in three vital constitutional areas:

1. *First Amendment Intrusion*

This Court's decisions in *Watkins* v. *United States*, 354 U.S. 178, and *Sweezy* v. *New Hampshire*, 354 U.S. 234, following upon the dictum in *United States* v. *Rumely*, 345 U.S. 41, leave no doubt that compelled disclosure before a legislative committee of personal and political associations is an intrusion upon First Amendment rights justifiable only by overriding governmental need. We respectfully submit that the intrusion herein upon protected freedoms is both more severe and less justified by any governmental need than in any similar case yet presented to this Court.

The briefest examination of the 31 questions petitioner refused to answer (see Appendix C, *infra*, p. 26) will demonstrate the direct restraint on First Amendment rights implicit in compelling answers thereto. These questions require petitioner to reveal his relationship to local and national civic and political organizations active in the field of civil rights, as well as to individual members of those organizations, in an atmosphere of bitter hostility and local antagonism to such associations. Under *Watkins* and *Sweezy*, there can be no doubt that such questioning restrains freedom of speech and association protected by the First Amendment.

Even less than in *Watkins* and *Sweezy* is the intrusion in this case justified by any governmental need for the answers sought. The Committee's questioning of petitioner was based on no more than unverified allegations in a pamphlet by an unknown organization which linked petitioner with various civic and political organizations. The only justification that the Committee could offer in the

Circuit Court for addressing such questions to petitioner was that they would enable it to determine "whether in fact those organizations are racial in character" and would help verify the charges of petitioner's connections therewith. Certainly if no more than this is required to order a private citizen under compulsory process to testify concerning his associations, then the First Amendment has ceased to impose any meaningful restraint on governmental action.

Moreover, even more than in *Watkins* and *Sweezy*, the Committee's inquiry was lacking in authorization from the parent body. The Virginia Assembly authorized the Committee to investigate the activities of organizations "which seek to influence, encourage or promote litigation relating to racial activities in this state." That is not an authorization to do what the Committee says it was doing in petitioner's case, determining whether various organizations are "racial in character." Indeed, the unauthorized nature of the inquiry was explicitly conceded by Chairman Thomson, who testified "we were trying to determine through his testimony whether in fact those organizations are racial in character, whether *at a future time* the Legislature might wish to authorize an investigation of those subjects" (Oct. 15 Tr. 39) (emphasis added).

Certainly enough has already been shown to demonstrate the absence of any tangible governmental need for the information demanded from petitioner. But we cannot refrain from pointing out to this Court that the intrusion on First Amendment rights in the instant case is not only unsupported by any tangible need but is affirmatively tainted by a clearly unjustifiable and unlawful investigative effort. The only consistently asserted justification, both in the enactment of the Committee's authorizing resolution and in its activities under that resolution, was the illegal

and unconstitutional purpose of massive resistance to school integration so candidly conceded by the Committee's Chairman. Legislative investigation to achieve results "devastating to the NAACP" which would "bust that organization wide open" by significantly discouraging membership therein under pain and penalty of governmental interrogation and censure, is plainly contrary to the guarantees of the First Amendment. While this purpose might not in and of itself vitiate an otherwise lawful inquiry based on a legitimate governmental need for the information sought, it certainly is the best possible evidence of the absence of any legitimate governmental need for the information sought from petitioner.

If New Hampshire's interest in restraining Communism and subversion did not suffice in the *Sweezy* case,[9] then clearly Virginia's effort to bust the NAACP wide open will not suffice to justify invasion of petitioner's First Amendment liberties.

2. *Restraint upon Equal and Unfettered Access to the Courts for Vindication of the Right to Non-segregated Schooling*

Petitioner's interrogation was part and parcel of Virginia's effort to nullify the right to non-segregated public schooling by restricting access to the courts for the vindication of that right. The legislative history of the enactment of the Thomson Committee's authorization clearly and explicitly reflects the determination of the Assembly, and the Governor who called it into special session, to nullify the right to integrated public schooling by

[9] Certainly the need for the information in the instant case is far less than that asserted by the New Hampshire authorities in *Uphaus* v. *Wyman*, No. 778, October Term, 1957, in which this Court granted certiorari on April 7, 1958. Cf. *Barenblatt* v. *United States*, No. 787, October Term, 1957, in which this Court granted certiorari on April 14, 1958.

harassment of the organization most actively utilizing the courts to vindicate the constitutional right to integrated public schooling. The Committee's questioning of approximately 100 persons connected with the NAACP, while calling but one witness connected with any other organization, is itself a demonstration of how closely Chairman Thomson was able to pursue his public promise that his investigation would be used "to keep the NAACP out of litigation, which is the heart of the organization."

The 14th Amendment assures unfettered and non-discriminatory access to the courts for the redress of grievances and the assertion of constitutional rights. *Truax* v. *Corrigan*, 257 U.S. 312, 334; *Terral* v. *Burke Construction Company*, 257 U.S. 529; *Barbier* v. *Connally*, 113 U.S. 27, 31. Only recently this Court evidenced its concern for equality of access to appellate courts and struck down under the 14th Amendment state action denying such equality. *Griffin* v. *Illinois*, 351 U.S. 12. Denial or restriction of access to the courts is no less state action because it is implemented through legislative investigation. *Cf.*, *Watkins* v. *United States*, at pp. 188, 196-198.

Petitioner is the victim of a crude, albeit candid, effort to deny the NAACP, its members and others, free and equal access to the courts to obtain the rights recently recognized in the *Brown* case. Since the Committee's interrogation of petitioner was an instrumentality for the accomplishment of the illegal and unconstitutional purpose to deny to the NAACP, to its members and to other citizens, equal access to the courts, petitioner's conviction contravenes the 14th Amendment's guarantees of due process and equal protection.[10]

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[10] Petitioner's contention that the purpose of the inquiry was to restrain free and equal access to the courts does not contravene the statement in the *Watkins* opinion (at p. 200) that the solution to the problems there raised "is not to be found in testing the motives of committee members."

3. *Denial of Due Process Before the Committee*

Petitioner was denied those very due process rights which this Court held in *Watkins* and *Sweezy* to be due every witness compelled to testify before a legislative investigating committee.

First, the Committee before which petitioner was summoned to appear lacked the minimal procedural safeguards necessary for fair treatment of witnesses. The Chairman of the Committee conceded at the hearing before the Virginia Circuit Court that the Committee had no published rules whatever and, indeed, had only two unpublished rules—one providing for a quorum and the other for recording the Committee's hearings. Certainly the first requirement of any governmental body that presumes to utilize compulsory process to compel testimony is a body of rules upon which a witness may rely in determining his rights. Compulsory interrogation without rules is inquisition, not due process.

Second, petitioner's interrogation was arbitrary and discriminatory because the Committee had no reasonable basis for calling and questioning him. Petitioner was called because of unverified and irrelevant allegations in a pamphlet emanating from an unknown organization. Apparently this was in conformity with the Committee's regu-

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For, what is relied on here is not covert motives but unsolicited and overt expressions of purpose by the Legislature, the Governor and the Committee. In any case, this Court has not hesitated to strike down, under the equal protection clause, state action whose purpose was found to be racially or otherwise discriminatory. See *Yick Wo* v. *Hopkins*, 118 U.S. 356, 374; *Guinn* v. *United States*, 238 U.S. 347; *Grosjean* v. *American Press Company*, 297 U.S. 233; *Lane* v. *Wilson*, 307 U.S. 268; *Terry* v. *Adams*, 345 U.S. 461. This Court's willingness in equal protection cases to look behind apparently non-discriminatory state action at legislative purpose is compelled by the nature of that constitutional protection itself, for a contrary rule would serve to strip the guarantee of equality of any practical vitality.

lar manner of proceeding, for the Chairman boldly volunteered that he proceeded on the basis of "anonymous telephone calls."

Third, contrary to the due process rule so recently announced in *Watkins*, the Committee failed both at the time of petitioner's appearance and at the Circuit Court hearing on the show cause order, to produce any understandable subject under inquiry to which petitioner's questioning might conceivably be pertinent. The confusing answer made to petitioner on this subject at the hearing (see n. 6, p. 8, *supra*) was compounded by the complete inability of the Committee Chairman to adduce in the Circuit Court any recognizable subject under inquiry (Tr. 38-45). Neither the authorizing statute nor the Committee Chairman's contradictory and inconsistent testimony on this issue provided any rational basis upon which petitioner could determine whether he was legally obligated to answer the Committee's questions.

In sum, the absence of rules guaranteeing a modicum of fairness in the Committee's interrogation of witnesses, the lack of any cause or reason for the interrogation of petitioner, and the absence of any recognizable subject under inquiry to which the questions addressed to petitioner might conceivably have been pertinent, render petitioner's conviction a violation of due process of law.

Conclusion

For the foregoing reasons petitioner's contempt conviction has clearly deprived him of vital constitutional rights in direct conflict with recent decisions of this Court and this petition for writ of certiorari should therefore be granted.

Furthermore, this Court may wish to consider the possibility of summarily reversing the judgment below. The decision of the Virginia Supreme Court of Appeals is so clearly in conflict with recent decisions of this Court that argument of this case might be deemed unnecessarily wasteful of the time of the Court. Petitioner therefore respectfully suggests the possibility of a summary reversal.

Respectfully submitted,

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APPENDIX A

OPINIONS, JUDGMENTS AND ORDERS OF THE SUPREME COURT OF APPEALS OF VIRGINIA AND THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

"VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 20th *day of* January, 1958.

The petition of David H. Scull for a writ of error to an order entered by the Circuit Court of Arlington County on the 15th day of October, 1957, in a certain proceeding then therein depending, wherein Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the order aforesaid seen and inspected, the Court being of opinion that the said order is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the order of the said Circuit Court."

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"VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 20th *day of* January, 1958.

The petition of David H. Scull for a writ of error to a judgment rendered by the Circuit Court of Arlington County on the 30th day of October, 1957, in a certain proceeding then therein depending, wherein Commonwealth of Virginia, ex rel. Committee on Law Reform and Racial Activities was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the judgment of the said Circuit Court."

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"VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

On October 15, 1957 there came on for hearing before this Court in the above entitled matter the Motion to Quash Rule to Show Cause filed by respondent David H. Scull. Said motion moved that this Court quash and dismiss the Rule issued upon respondent requiring him to appear and show cause why he should not be required to answer certain questions previously asked him on September 20, 1957 when he was subpoenaed to testify before the Committee on Law Reform and Racial Activities established by Chapter 37 of the Laws of the General Assembly, Extra Session 1956. Thereupon said motion was argued by Counsel for respondent and petitioner, and the Court took evidence and heard arguments under the Rule previously issued.

The Court having considered the evidence and arguments presented by both sides and being of the opinion that the grounds advanced by respondent are without merit and that he is properly required to answer the questions previously addressed to him by said Committee, it is accordingly

ORDERED that the Motion to Quash the Rule to Show Cause served on petitioner on September 20, 1957, be and is hereby denied, and the respondent David H. Scull is ordered at a time and place designated hereinafter to appear before said Committee and answer those questions addressed to respondent which he has previously refused to answer before said Committee on September 20, 1957 at Court Room No. 3, Court House, Alexandria, Virginia, at 10:00 a.m., October 23rd.

Respondent, David H. Scull, having taken exception to the Court's order and having represented that he intends to petition for a writ of error to the foregoing portion of this order, and having requested a stay thereof to permit him to file his petition, it is further

ORDERED that the motion of the respondent requesting this Court to stay its order herein be and it is hereby denied.

Given under my hand this 15th day of October, 1957.

(S.) EMERY N. HOSMER,
Judge of the Circuit Court of the County of Arlington, Virginia".

* * * * * * *

"IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

ORDER

This cause came on to be heard on the 30th day of October, 1957, on the rule to show cause why the Respondent should not be held in contempt of the order of this court dated October 15, 1957, and upon the motion to quash or continue return on said rule, which motion was made on behalf of the Respondent; and the court having heard evidence and arguments upon said motion and upon said rule,

It is hereby ORDERED, ADJUDGED and DECREED that the Respondent's motion to quash or to continue return should be and hereby is denied; that it is the judgment and order of this court that the Respondent be and he hereby is found guilty of civil and criminal contempt of the order of this court of October 15, 1957; and

It is the judgment of this court that the Respondent should be and he hereby is sentenced to serve ten days in the Arlington County jail and to pay a fine of $50.00 and costs, to all of which rulings, orders and judgments the Respondent, by counsel, duly excepted; and

It is further ORDERED that the execution of this judgment and sentence be and it hereby is suspended, conditioned upon the filing of a petition for appeal or writ of error from the Supreme Court of Appeals of Virginia within 60 days from the date of this order; and

It is further ORDERED that the Respondent be admitted to bail in the sum of $500.00 during the suspension of this order; and

It is further ORDERED that the Attorney for the Commonwealth be permitted to enter his appearance as counsel of record for the Petitioner.

Entered this 30th day of October, 1957.

(S.) EMERY N. HOSMER,
Judge.

* * * * * * *

Opinion of Circuit Judge Hosmer Rendered October 15, 1957 (Tr. p. 84-85)

"THE COURT: Gentlemen, it seems to me that this case does not fall squarely within the findings in the *Sweezy* case or in the *Watkins* case. In both of those cases the legislative enactment was very broad indeed. The statute under consideration, it seems to me, points out definitely three areas of inquiry which the committee is authorized to make and they are with respect to determining the need or lack of need for legislation, which would assist in the investigation of such organizations, corporations, associations, relative to the state income tax laws. That is a definite subject of inquiry so far as the authorization to the Committee is concerned.

And concerning the need or lack of need for legislation redefining the taxable status of such corporations, associations, organizations, and other groups as above referred to and further defining the status of donations to such organizations or corporations from a taxation standpoint; and determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

The situation in this case is different in another aspect. In this case the witness has declined to answer any questions of the Committee based primarily on his contention that the Act of the Legislature is unconstitutional. The attack today is on a broad ground that the authorization of the Legislature should be narrowed in its interpretation

by the Court so that the witness is excluded from testifying. That contention will necessarily have to be rejected. The attack on the broad, constitutional ground is, of course, a very broad approach to the question of constitutionality of this Act in saying that the very purpose of the legislation is such that it renders the Act unconstitutional. The Court likewise rejects that contention.

Consideration of the questions asked by the committee shows that the questions are of a preliminary nature and in developing the inquiry to secure the information which the Committee is after appears to the Court to be perfectly proper line of inquiry.

The Court has concluded that the witness should be required to answer the questions propounded to him by the Committee."

APPENDIX B

Statute Involved

Chapter 37, Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1956

An Act to create a legislative committee of the House and Senate to investigate and hold hearings relative to the activities of corporations, associations, organizations and other groups which encourage and promote litigation relating to racial activities; to provide for the organization, powers and duties of said committee; to provide for hearings; to authorize said committee to issue subpoenas and require testimony; to provide for application to court for an order requiring any person to appear and testify who fails or refuses to do so; to provide for witness fees; to provide for employment of a clerical and investigative force by the committee; to provide for payment of expenses; to appropriate funds for use of the committee; to provide that the Attorney General or other legal counsel shall represent said committee; and for other purposes.

[H 65]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. There is hereby created a Legislative Committee, to be composed of six members of the House appointed by the Speaker thereof, and four members of the Senate appointed by the President thereof.

§ 2. The Committee is authorized to make a thorough investigation of the activities of corporations, organizations, associations and other like groups which seek to influence, encourage or promote litigation relating to racial activities in this State. The Committee shall conduct its investigation so as to collect evidence and information which shall be necessary or useful in

(1) determining the need, or lack of need, for legislation which would assist in the investigation of such organizations, corporations and associations relative to the State income tax laws;

(2) determining the need, or lack of need, for legislation redefining the taxable status of such corporations, associations, organizations and other groups, as above referred to, and further defining the status of donations to such organizations or corporations from a taxation standpoint; and

(3) determining the effect which integration or the threat of integration could have on the operation of the public schools in the State or the general welfare of the State and whether the laws of barratry, champerty and maintenance are being violated in connection therewith.

§ 3. Said Committee may hold hearings anywhere in the State, and shall have authority to issue subpoenas, which may be served by any sheriff or city sergeant of this State, or any agent or investigator of the Committee, and his return shown thereon, requiring the attendance of witnesses and the production of papers, records and other documents. If any person, firm, corporation, association or organization which fails to appear in response to any such subpoena as therein required, or any person who fails or refuses, without legal cause, to answer any question propounded to him, then upon the application by

the Chairman, or any member of the Committee acting at his direction, to the circuit or corporation court in the county or city wherein such person resides or may be found, such court shall issue an order directing such person to appear and testify. The Committee may, at its option, compel attendance of witnesses or production of documents by motion made before the circuit or corporation court having jurisdiction of the person or documents whose attendance or production is sought. The court upon such motion shall issue such subpoenas, writs, processes or orders as the court deems necessary. The Chairman of the Committee, or anyone acting at his direction, shall be authorized to administer oaths to all witnesses and to issue subpoenas. Every witness appearing pursuant to subpoena shall be entitled to receive, upon request, the same fee as is provided by law for witnesses in the courts of record in the State, and where the attendance of witnesses, residing outside the county or city wherein the hearing is held is required, they shall be entitled to receive the sum of seven dollars after so appearing, upon certification thereof by the Chairman to the State Comptroller.

§ 4. Each member of the Committee shall receive, in addition to actual travel expenses, the same per diem as received by members of other legislative committees, while engaged in official duties as a member of said Committee.

§ 5. Said Committee shall be authorized to employ a clerical force and such investigators and other personnel as it may deem necessary to carry out the provisions of this act, and may expend moneys for the procuring of information from other sources.

§ 6. The Attorney General shall assist the Committee upon request, and the Committee may engage such other legal counsel as it shall deem necessary.

§ 7. The Committee shall complete its investigations and make its report, together with any recommendations as to legislation, to the Governor and the General Assembly not later than November one, nineteen hundred fifty-seven.

2. There is hereby appropriated from the general fund of the State treasury the sum of twenty-five thousand dollars to carry out the purposes of this act.

APPENDIX C

QUESTIONS ADDRESSED TO PETITIONER BY THE THOMSON COMMITTEE ON SEPTEMBER 20 WHICH HE HAS REFUSED TO ANSWER

(1) "Are you a member of The Fairfax County Council on Human Relations?"

(2) "Are you a member of the National Association for the Advancement of Colored People?"

(3) "Have you contributed to any of the suits, contributed financially to any of the suits designed to bring about racial integration in the public schools?"

(4) "Have you paid court costs in any of the suits designed to bring about racial integration in the State of Virginia?"

(5) "Have you paid attorneys' fees to any attorneys in regard to racial litigation involved in the integration of the public schools in Virginia?"

(6) "Have you attended any meetings at which the formulation of suits against the State of Virginia in racial integration suits in the public schools have been discussed?"

(7) "I notice in your statement that you say that you think you have a moral duty to counsel with a fellow citizen as to his legal rights if he is ignorant of them. Do you feel qualified to counsel with him as to his legal rights?"

(8) "Who else uses that box number [No. 218 in Annandale, Va.] besides yourself?"

(9) "Does the Fairfax County Council on Human Relations use that box?"

(10) "Has the NAACP used that number from time to time?"

(11) "Has the organization know as the Citizens Clearing House used that box number?"

(12) "Has the Fairfax County Federation of PTA's used that number?"

(13) "Has the Fairfax County Federation of P-TA Workshops on Supreme Court Decisions on the Public Schools used that box number?"

(14) "Has Miss Caroline H. Planck or Mrs. Barbara Marx used that box number?"

(15) "Do you know Mrs. Planck or Mrs. Marx?"

(16) "Has Dr. E. B. Henderson used that box number?"

(17) "Has the National Conference of Christians and Jews used that box number?"

(18) "Has the Save Our Schools Committee of Fairfax County used that box number?"

(19) "Has Mr. Warren D. Quenstedt used that box?"

(20) "Has Mr. E. A. Prichard used that number?"

(21) "Has the American Civil Liberties Union used that same box number?"

(22) "Has the Americans For Democratic Action, known as ADA, used that box number?"

(23) "Has the Japanese-American Citizens League used that box number?"

(24) "Has the Washington Inter-Racial Workshop used that same number?"

(25) "Has the American Friends Service Committee used that box number?"

(26) "Does the Community Council for Social Progress use the same box number?"

(27) "Does B'nai Brith use that same box number?"

(28) "Does the Communist Party use that box number?"

(29) "Do you belong to any racial organization, and by 'racial' I mean organizations whose membership is inter-racial in character or organizations that are instituting or fostering racial litigation?"

(30) "Have you ever been called as a witness before any Congressional Committee?"

(31) "Has your name ever been cited by any Congressional Committee as being on any list of members of any organizations that are cited as subversive?"

APPENDIX D

Preservation of the Federal Question

Statement by Petitioner in Refusing to Answer Before the Committee on Law Reform and Racial Activities on September 20, 1957

"Mr. Chairman:

"On September 29, 1956, the General Assembly of Virginia passed seven bills designed, broadly speaking, to restrict the free access to the courts of citizens who need to establish or maintain their civil rights. I believe that all of this legislation is unconstitutional and contrary to our heritage of common law, and that consequently this Committee, created by one of those bills as part of a whole legislative program, is without proper jurisdiction to pursue its inquiry.

"I believe that it is not only my civil right but also under some circumstances my moral duty to counsel with a fellow-citizen as to his legal rights if he is ignorant of them, to offer him my support if he is fearful of asserting his rights, and to assist him financially if he is too poor to take the legal steps necessary to establish his rights. It should, of course, be the duty of the executive and of the legislature to see that the rights of all citizens are protected. But when to the lasting dishonor of Virginia our Governor and our General Assembly have done everything possible to discourage our humblest citizens from enjoying their rights, it becomes especially the duty of the conscientious person to see to it that justice is done to the ignorant, the friendless, and the poor. I make no claim here to have done anything extraordinary in this way, but I believe that no agency of the government has the right to question or to interfere with any citizen in the exercise of such a civic role. If such intimidation were sanctioned, then no unpopular cause or helpless

minority could be assured of free access to the courts as a protection against tyranny. A disinterested concern for justice for the person from whom there is no possible claim of blood or opportunity of reward has through the ages been extolled as one of the noblest virtues, and a cornerstone of our system of laws. Such a disinterested act is made illegal by the legislation passed last year. I am proud to have protested this action in Richmond before it became law; I challenge it now.

"Consequently, I shall decline to answer any question on this subject put by the present committee unless and until the constitutional validity of its inquiry and the related legislation has been upheld by proper judicial process.

"I believe that furthermore any right which I may exercise personally and individually I may also exercise jointly with other citizens through a voluntary organization or through voluntary contributions, and that the state has no general right to invade the privacy of such voluntary association in order to accomplish unconstitutional objectives. I shall, therefore, equally decline to answer questions put by this committee on this subject, although as in the case of individual activities I shall willingly answer such questions as the highest court to which the matter may be referred shall decide are proper. I fullly recognize the public right to know the officers, directors, and general purposes of every organization which sets itself before the public in any way, but since this is a matter of public information for every organization to which I belong or contribute, I have nothing to add to what the committee can obtain directly from the organization in which it may have an interest.

"The subpoena served upon me goes beyond this Committee's power under its enabling act. I am not properly informed of the subject of inquiry. The question you ask me is beyond your jurisdiction.

"For all of the foregoing reasons, and on the basis of all the rights accorded me under Sections 8, 11, and 12 of the Constitution of the Commonwealth of Virginia and

the correlative provisions of the Federal Constitution, I respectfully decline to answer that question."

* * * * * * *

Motion to Quash Rule to Show Cause Filed in the Circuit Court of the County of Arlington, October 15, 1957

"... The demand made upon Movant to answer said questions is in violation of his rights under the Due Process and Equal Protection guarantees of the Fourteenth Amendment to the United States Constitution in the following respects and particulars:

(a) The Thomson Committee was established and given investigative authority, as part of a legislative program of "massive resistance" to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify, and publicly embarrass members of the NAACP and others who are attempting to secure integrated public schooling in Virginia.

(b) The purpose and effect of the inquiries of the Thomson Committee, including those addressed to the Movant, is denial of access to the courts for vindication of Constitutional rights, by harassment and exposure of school integration plaintiffs and members of the organization which is most actively engaged in litigating the integration suits.

(c) The inquiries addressed to Movant violate his rights of free speech, assembly, and petition because they repress freedom of expression and constitute an unjustified intrusion into and restraint upon his association with others in legal and laudable political and humanitarian causes.

(d) The demand for answers made upon Movant by the Thomson Committee is arbitrary and unreasonable inasmuch as there is no justification for the special and selective investigatory authority granted to the Thomson Committee, and nothing in that authority renders pertinent the demand made upon Movant to disclose his civic and political associations and activities.

(e) The Thomson Committee's authorizing resolution is

too vague and imprecise to justify compelled testimonial disclosures.

(f) The Committee failed, despite proper inquiry made by Movant, to inform him in what respect its questions were pertinent to the subject under inquiry by the Committee.

(g) The information sought from Movant was neither intended to, nor could reasonably be expected to, assist the Legislature in any proper legislative function."

(9947-3)